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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. 111

DEPARTMENT OF MENTAL HYGIENE OF THE
STATE OF CALIFORNIA.

Petitioner.

vs.

EVELYN KIRCHNER, Administratrix of the
Estate of Ellinor Green Vance,

Respondent.

BRIEF FOR THE RESPONDENT
on Writ of Certiorari to the Supreme Court
of the State of California

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Subject Index

	Page
Jurisdiction	1
Statement of the case	4
Summary of argument	6
Only the dangerously insane are committed to state hospitals such as Agnews in California	8
Relatives are still liable for the support of needy senile persons and needy persons not dangerously mentally ill	14
The case of Department of Mental Hygiene v. Hawley is dispositive of the issues of this case	17
Section 6650 imposes an absolute liability on servient relatives without regard of ability to pay or the need of the patient, and such a concept denies the relative equal protection of the law	21
Section 6650 violates the equal protection clause	29
1. What is the purpose of the law?	29
2. What classification is established by §6650?	29
3. Is there any reasonable relation between paragraphs 1 and 2?	30
The decision did not deny petitioner procedural due process	32
Conclusion	34

Table of Authorities Cited

Cases	Pages
Dept. of Mental Hygiene v. Hawley (1963) 59 Cal.2d 247, 379 P.2d 22	7, 17, 18, 20, 24, 32, 33
Dept. of Mental Hygiene v. McGilvery (1958) 50 Cal.2d 742, 329 P.2d 689	2, 24
Dept. of Mental Hygiene v. Shane (1956) 142 C.A.2d Supp. 881, 299 P.2d 747.....	27
Indiana ex rel. Anderson v. Brand (1937) 303 U.S. 96....	3
Johnston v. Ota (1941) 43 Cal.App.2d 94, 110 P.2d 507....	5
Kough v. Hoehler (1952) 413 Ill. 409, 109 N.E.2d 177....	18

TABLE OF AUTHORITIES CITED

	Pages
Mansur v. Sacramento (1940) 39 Cal.App.2d 426, 103 P.2d 221	2
Matter of Application of Hareourt (1915) 27 Cal.App. 642	9
Wilson v. Loew's (1958) 355 U.S. 597, 2 L.Ed. 519, 78 S.Ct. 526	3
 Codes 	
California Civil Code:	
Section 224	16
Section 243	16
Section 1432	24, 25
California Code of Civil Procedure:	
Section 690.11	25, 26
California Welfare and Institutions Code:	
Division VI, Chapter 1, Part 1	11
Division VI, Chapter 1, Part 4	32
Section 19	29
Section 5076	6, 11, 16
Section 5077	7, 15, 16
Section 5100	9
Section 5102	10
Section 6563	7, 19
Section 6624	7, 20
Section 6650	passim
Section 6655	27
Sections 7000-7015	32
Section 7011.5	32
Sections 7100-7111	32
Section 7106	32
Section 9000	31
 Constitutions 	
California Constitution, Article I, Section 21	2
 Opinions 	
34 Attorney General's Opinions 313	12
 Texts 	
27 California Jurisprudence 2d 430	9
39 N.Y.U. L. Rev. 858 (1964)	29

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JURISDICTION

Though it is true that the State of California has no "equal protection clause" in the exact phraseology in which the Fourteenth Amendment of the United States Constitution is couched, California does have

equivalent provisions in its Constitution. Article I, section 11 of the California Constitution reads as follows:

"All laws of a general nature shall have a uniform operation."

In *Dept. of Mental Hygiene v. McGilvery*, (1958) 50 Cal.2d 742, 329 P.2d 689 the Court interprets this section and says:

"Article I, section 11 of the California Constitution requires that all laws of a general nature have a uniform operation. This has been held generally to require a reasonable classification of persons upon whom the law is to operate. The classification must be one that is founded upon some natural or intrinsic or constitution distinction (citing cases). Likewise, those within the class, that is those persons similarly situated with respect to that law, must be subjected to equal burdens (citing cases). The clause of the Fourteenth Amendment to the federal Constitution which prohibits a state from denying to 'any person' within its jurisdiction the equal protection of the laws' has been similarly construed."

Further, Article I, section 21 of the California Constitution prevents the granting of special privileges or immunities to particular citizens or classes of citizens which are not granted to all (*Mansur v. Sacramento* [1940] 39 Cal.App.2d 426, 103 P.2d 221). This section reads as follows:

"No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen,

or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

Since the judgment of the California Supreme Court need not be based on the Fourteenth Amendment, but can be based upon the California Constitution, it therefore rests on an adequate State ground, and it appears that the writ was improvidently issued (*Wilson v. Loew's* [1958] 355 U.S. 597, 2 L.Ed. 519, 78 S.Ct. 526). Even though it may appear from the decision of the California Court that the decision is based upon a determination of the federal question, a construction of the Fourteenth Amendment by this Court opposed to the California Supreme Court would not effect the California Supreme Court's determination, because its decision is independently sustainable under the California Constitution.

In the case at bar the respondent prevailed in the state Court. It would have been different had the respondent lost in the State Supreme Court because then federal rights would have been violated. This rule is stated by this Court in *Indiana ex rel. Anderson v. Brand* (1937) 303 U.S. 96, 98, where the Court says:

"Where the state court does not decide against a petitioner or appellant upon an independent state ground, but deeming the federal question to be before it, actually entertains and decides that question *adversely to the federal rights asserted*, this Court has jurisdiction to review the judgment if, as here, it is a final judgment. We

cannot refuse jurisdiction because the state court might have based its decision, consistently with the record upon an independent and adequate non-federal ground." (italics ours).

In the case at bar the state Court ruled in favor of the claimed federal right.

STATEMENT OF THE CASE

Petitioner's judgment in the trial Court was on the pleadings (R. 19-20). No evidence was introduced or considered by the trial Court, so all of the facts in this case are contained in the pleadings which consist of petitioner's complaint (R. 1-4) and respondent's answer (R. 8-10).

However, petitioner states in his brief that respondent is the principal beneficiary of the estate of Ellinor Vance, the deceased daughter (Pet.Br., p. 3). Nowhere in the Transcript of Record can this be substantiated. Respondent made the same representation to the Supreme Court of the State of California (R. 49), but that Court did not so find in its decision.

The fact is that it does not appear from the record before the Court who are the beneficiaries in the estate of Ellinor Vance, or who may be the heirs of the mentally ill person. Nor does it appear from the record whether there are others claiming as creditors against the estate of the decedent.

Petitioner argues that the trial Court was asked to take judicial notice of the probate file of the estate

of Ellinor Green Vance (R. 49), but normally a Court will not in one case take judicial notice of the records or judgment in another case. This is so even though the action is pending in or was determined by the same Court, and was between the same parties (*Johnston v. Ota* [1941] 43 Cal.App.2d 94, 110 P.2d 507).

A second correction respondent wishes to make to plaintiff's Statement of the Case relates to the amount of money available in the estate of the mentally ill person to pay the accrued charges of the Department of Mental Hygiene. Petitioner states that the amount of money owing the Department exceeds the assets in the guardianship estate (Pet.Br., p. 3). The Supreme Court of California heard the same argument (R. 45-46) but impliedly found that there was "some \$11,000.00 in cash, * * *." Apparently the District Court of Appeal of California came to the same conclusion (R. 27-28).

The fact before the Court is that respondent in her capacity as guardian of the estate of the mentally ill person offered to pay the claim out of the assets of the patient's estate, but petitioner refused to accept payment from the guardian. Now petitioner is saying that the guardian did not have enough money to pay the charge, but the fact is that she did.

It appears from petitioner's own statement (Pet.Br., p. 3) that the lien of \$6,425.00 granted petitioner in 1958 covered two years of the same period covered by the petitioner's claim of \$7,554.22, which is the subject of this suit. If petitioner is to recover twice for this two year period the total claim would be

\$13,979.22 which does exceed the money in the guardianship estate by approximately \$3,000.00, but under no theory is petitioner entitled to collect twice for that two year period.

According to petitioner's claim the sum of \$7,554.22 was for a four year period (Pet.Br., p. 3). Divide this by four and we have an average annual charge of \$1,888.55. Giving the respondent credit for those two years she has a total credit of \$3,777.10 which is \$777.10 more than the total bill claimed by petitioner.

Aside from these observations respondent accepts plaintiff's statement of the case.

SUMMARY OF ARGUMENT

The California Legislature has reserved state hospitals, such as Agnews, for the dangerously insane. California Welfare and Institutions Code § 6650 (section references will be to this Code unless otherwise indicated) appertains to the support of those persons who are in those hospitals only, and it does not cover the area of support for those mentally ill who are lodged elsewhere.

The senile and those not dangerously mentally ill are committed to a county counselor of mental health, and they may be placed in a suitable licensed home, sanitarium or rest haven home (§ 5076). If such a person is indigent his husband, wife, father, mother, or children, in the order named must reimburse the county for his support. Further, the cost of the main-

tenance of such a person can be charged directly to the relative (§ 5077). This section of the code remains unimpaired by the decision of the California Supreme Court in this case.

State hospitals, such as Agnews, are for the dangerously insane and are primarily for the protection and benefit of the public. The business manager of each hospital and all the employees therein that he may appoint as police officers have "all the powers of police officers" (§ 6563). For those persons with a mental disease which is likely to be transmitted to descendants, or for those persons who suffer a mental deficiency, or for those persons who suffer a marked departure from normal mentality, sterilization is provided (§ 6624). It is difficult to understand petitioner's argument that all of this is for the benefit of the relatives.

Clearly, the conduct of these state hospitals for the treatment of those who would endanger themselves or others if at large is a proper state function, and this being so, the expense of running them should be borne by the state for the reasons the Court gave in *Dept. of Mental Hygiene v. Hawley* (1963) 59 Cal.2d 247, 379 P.2d 22, which case is dispositive of the case before the Court.

Section 6650 imposes an absolute, unconditional liability on servant relatives without regard to their ability to pay, without regard to the needs of the patient, without regard of the rights of the heirs of the relatives, and without regard of the rights of the relative to control the spending of his own money.

Which of several relatives are to be sued by the Department is left to the whim and uncontrolled discretion of a department head; he may remit or forgive the liability of one relative and go to judgment against another. No standards for collection procedures are provided by the section. Further, the section does not give the relative the right to recoup from the assets of the patient. Manifestly, such a law is unconscionable and does not meet the standards of fair play inherent in the Equal Protection Clause.

Lastly, the unfairness of § 6650 must be viewed in the light of recent legislation. In this state the mentally deficient without an estate of his own, the needy children and the needy blind are supported by tax money. Tax supported programs have also been set up for the inebriates and drug addicts. Surely this emphasizes the unfairness of the section that imposes a liability on an adult daughter for the support of her mother who had an estate of her own that may have been larger than that of the daughter's.

ONLY THE DANGEROUSLY INSANE ARE COMMITTED TO STATE HOSPITALS SUCH AS AGNEWS IN CALIFORNIA.

Under commitment procedures of this state if, after examination, the judge believes that the person is either of such mental condition that he is in need of supervision, treatment, care, or restraint, or of such mental condition that he is dangerous to himself or to the person or property of others, and is in need of supervision, treatment, care, or restraint, the judge

may adjudge the person to be mentally ill, and the judge can commit the patient to any one of the three types of facilities set forth in § 5100, which said section reads in part as follows:

"(a) That the person be cared for and detained in a licensed sanitarium or hospital for the care of the mentally ill entitled by law to receive and care for such persons, or that the person be otherwise cared for, until the further order of the court, or

"(b) That the person be committed to the Department of Mental Hygiene for placement in a state hospital designated by the court, or

"(c) That the person be committed to a facility of the Veterans Administration, or other agency of the United States Government, in accordance with the provisions of Section 1663 of the Probate Code."

Where the judge concludes that the person be committed to the Department of Mental Hygiene for placement in a state hospital, the judge must find that the patient is insane and so far disordered in mind as to endanger health, person, or property, and also find that it is dangerous for life, health, person, and property that such person be at large (27 California Jurisprudence 2d 430). As stated in the case of *Matter of Application of Harcourt* (1915) 27 Cal.App. 642, the Court says:

"There does not appear to be any reasonable ground for doubting that, to justify a judgment or order adjudging a person insane to the extent that his confinement in a hospital for insane per-

sions is necessary to the safety of the public, there must be found in the patient a mental condition from which there will follow more than a mere possibility that he will, by reason of such condition, if allowed to remain at large, 'endanger life, health, person, and property.' The statute does not use the word 'possibly' or any term of analogous signification, and certainly the power to commit was not intended by the legislature to be coextensive with or measured by the possibilities of which a deranged human mind is capable. Minds not deranged from the viewpoint of alienists are equally subject to possibilities the crystallization of which would bring disaster to life or person or health or property. What was intended and what the statute plainly means is that the patient, having been found to be insane, must be committed to an institution established for the care and treatment of lunatics only upon the condition *that it be further found that the degree or character of his affliction is such as to make it reasonably probable or certain that, if allowed to remain at large, he would, by reason of such mental condition, endanger life, person, etc., or become a menace to the safety of the public.*" (italics ours).

If, however, the judge should find that the patient be harmless, then, that patient cannot be committed to the Department of Mental Hygiene for placement in any state hospital. This is covered by § 5102 which reads as follows:

"No case of harmless chronic mental unsoundness or mental deficiency shall be committed to the Department of Mental Hygiene for placement in

any state hospital for the care and treatment of the mentally ill. When any such person becomes mentally ill, however, he may be committed to the Department for placement in a designated state hospital for the mentally ill or to a licensed hospital or sanitarium, as provided in this chapter."

Further, if the patient is found upon examination not to be dangerously mentally ill the Court may commit this patient to the care and custody of the county counselor of mental health, and this is provided for by § 5076, which reads as follows:

"If, on the examination as provided by law, the court finds a person to be mentally disordered and bordering on mental illness but not dangerously mentally ill, the court may commit him to the care and custody of the counselor in mental health and may allow him to remain in his home subject to the visitation of a counselor in mental health and subject to return to the court for further proceedings whenever such action appears necessary or desirable; or the court may commit him to be placed in a suitable home, sanitarium, or rest haven home, subject to the supervision of the counselor in mental health and the further order of the court."

All of the above mentioned sections are in Chapter 1, Part 1, Division VI of the Welfare and Institutions Code, and they are all designated **COMMITMENTS OF MENTALLY ILL PERSONS AND INSANE PERSONS.**

In 1959 Judge Nix, Judge of the Superior Court of Los Angeles County, had a question concerning the

right to commit persons suffering from harmless chronic mental unsoundness, and he directed his question to the Attorney General of this State, and on December 31, 1959 the Attorney General of this State gave his opinion on this question. The opinion is cited as 34 Attorney General's Opinions 313.

One of the questions asked by Judge Nix was as follows:

"Are persons suffering harmless chronic mental unsoundness, or non-psychotic senile persons needing care, treatment, and supervision outside the family home subject to Chapter 1, Part 1, Division VI of the Welfare and Institutions Code relating to commitment of mentally ill persons?"

In reply thereto the Attorney General answered as follows:

"Persons suffering harmless chronic mental unsoundness and non-psychotic senile persons needing care, treatment, and supervision outside the family home are subject to the commitment procedures provided in Chapter 1, Part 1, Division VI of the Welfare and Institutions Code."

In analyzing his answer the Attorney General stated as follows:

"The problems incident to nonpsychotic seniles including procedure for determination of mental condition, commitment, detention or restraint, custody, care, and treatment, was the subject of legislative analysis by the Assembly Interim Committee on Social Welfare (see: Assembly Interim Committee Reports, 1953-1955, Vol. 19, No. 1, 'The Nonpsychotic Seniles and Related Problems')."

"A number of legislative and administrative actions were recommended including making the existing law more clear, precise and humane as it relates to the process of detention, restraint, and commitment, especially in the case of elderly people who are aware of their difficulties (pp. 15-19). Little change in the procedure has been made since the report was filed.

"In the opinion request, 'nonpsychotic senile persons' are characterized as being 'aged, undergoing physical infirmities, moderate loss of memory, childishness, irritability or restlessness, careless toilet habits, feeding problems, and occasionally periods of mild depression. . . . Such persons are generally incompetent to care for their person and property, and require supervision and treatment, which is afforded in a rest home, sanitarium or nursing home.'

"It is our opinion that nonpsychotic seniles as defined supra are within the scope of section 5040 and are 'mentally ill persons.' With the exception that the *nonpsychotic senile may not be committed to a state mental hospital* (sections 5102 and 6733 specifically prohibit the admission and require the discharge of those affected with 'harmless, chronic, mental illness') the other commitment provisions of chapter 1, page 1, division 6 are applicable. These include commitment to licensed sanitariums, hospitals other than a state mental hospital, or other suitable facility (section 5100 (a)), or to a counselor in mental health (section 5076)." (italics ours).

Petitioner now argues that many of the patients the Department of Mental Hygiene is caring for in

state hospitals are not actually dangerously mentally ill, but merely senile (R. 81). This may be the fact; petitioner is there and should know. However, if it is in truth the fact, then there has been a violation of the law which directs that harmless mentally ill persons shall not be sent to state hospitals.

Petitioner further argues that today mental hospitals must be considered not as custodial institutions but rather as centers for treatment, and cites as his authority Dr. Rapaport (Pet.Br., p. 27). Perhaps, this is what is happening in the state hospitals of this State, but if it is, this condition is without the approval and consent of the State Legislature.

This section of the brief is confined to the issue of the dangerously mentally ill. However, should the Court consider that broader issues are before the Court, we understand that such issues will be briefed in the amicus brief being submitted on behalf of the National Association for Retarded Children and the American Orthopsychiatric Association.

RELATIVES ARE STILL LIABLE FOR THE SUPPORT OF NEEDY SENILE PERSONS AND NEEDY PERSONS NOT DANGEROUSLY MENTALLY ILL.

Section 6650 is limited to the liability for the care of an inmate of a state hospital, and it is only with reference to the support of these inmates that the decision of the California Supreme Court applies.

The support of those committed persons who are not dangerously, mentally ill, and who are not lodged

in a state hospital, is provided for in § 5077, and this section reads in part as follows:

"The reasonable cost of maintenance of a person committed under the provisions of Section 5076, in a sum to be fixed by the Court at the time of the commitment, shall be defrayed out of the estate of the patient so committed or shall be a charge upon his relatives liable for his maintenance.

"If, however, the patient is found to be an indigent resident of the county, in accordance with the definition of such residence prescribed in Article 2 of Chapter 2 of Division IV of the Welfare and Institutions Code as amended, and without funds or relatives responsible for his maintenance able to pay such charge, then the expense of his maintenance shall be a charge upon the county in which the court has jurisdiction and shall be paid out of the county treasury upon a ~~written~~ order of the judge of the superior court of the county, directing the county auditor to draw his warrant upon the county treasurer specifying the amount of such expense.

"All funds expended by the county for the maintenance of such patient, or such maintenance in a sum or rate per day or per month fixed by the board of supervisors where such patient is cared for in a county institution, shall be a charge against such patient or against his husband, wife, father, mother, or children, in the order named and the county shall be entitled to reimbursement therefor. If such patient has property or acquires any the county shall have a claim against him or his estate, if deceased, to the amount of expense incurred and said claim shall be enforced,

if necessary, by action against him or his estate, if deceased, upon order of the board of supervisors of the county incurring such expense. If the patient has such husband, wife, father, mother, or children liable to him for his maintenance, the county shall have a claim against such relatives, or any of them, in the order named, to the amount of expense incurred, and said claim shall be enforced, if necessary, by action against such relatives, or any of them, upon order of the board of supervisors of the county incurring such expense."

The above quoted section refers to "his relatives liable for his maintenance." The general rule fixing the reciprocal duties of spouses, parents and children in maintaining each other is set forth in the Uniform Liability for Support Act in California Civil Code Sections 242 and 243, which sections read as follows:

"Every man shall support his wife, and his child; and his parent when in need. The duty imposed by this section shall be subject to the provisions of Sections 175, 196, and 206 of the Civil Code."

"Every woman shall support her child; and her husband and her parent when in need. The duty imposed by this section shall be subject to the provisions of Sections 176, 196, and 206 of the Civil Code."

So we conclude that the liability imposed by § 5077 is based upon the need of the patient and the ability of the relative to pay.

The care provided for the senile persons and persons who are not dangerously mentally ill under § 5076

is obviously for the benefit of the patient and his relatives, and it is only right and proper that a relative should provide for the support of such a patient where the patient is in fact in need and the relative has the ability to support.

**THE CASE OF DEPARTMENT OF MENTAL HYGIENE v. HAWLEY
IS DISPOSITIVE OF THE ISSUES OF THIS CASE.**

In *Dept. of Mental Hygiene v. Hawley* (1963) 59 Cal.2d 247, 379 P.2d 22, the Department of Mental Hygiene attempted to collect from a father for the cost of care, support and maintenance in a state hospital for the mentally ill of his son who had been charged with a crime, but before trial of the criminal issue had been found by the Court to be insane and was committed to a state hospital. There the Court said at page 255:

"From what has been said it is apparent that a person committed to a state institution under the provisions of Sections 1026 or of Sections 1368 et seq. of the Penal Code is held for the primary purpose of protection of the public in the course of administration of laws prohibiting crime."

At page 256 of the decision, the Court said:

"The mere fact that innocent persons are relatives of an accused or convicted person does not deprive them of their fundamental rights or constitute a lawful basis for a statute or judgment whereby their property may be taken to be the cost of prosecuting, detaining, or otherwise treating the accused."

We wish to point out that the liability imposed in the case of *Dept. of Mental Hygiene v. Hawley* (*supra*) and the liability imposed in the case before the Court was of the same source. The last sentence of § 6650 reads as follows:

"* * *. The liability of such persons and estates shall be a joint and several liability, and such liability shall exist whether the mentally ill or inebriate has become an inmate of a state institution pursuant to the provisions of *this code* or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the *Penal Code*."

(italics ours).

Petitioner cites *Kough v. Hoehler* (1952) 413 Ill. 409, 109 N.E.2d 177 (R. 71) for the proposition that the two types of commitment should be handled differently. It is true that they are handled differently in the State of Illinois, because in Illinois the act under question in the *Kough* case "excludes from its provisions mentally ill persons who are in custody on a criminal charge." However, in this State the legislature has declared in § 6650 that both types of commitments should be charged and the liability be imposed in the same manner.

Not only is the source of liability the same in the two California cases, but the facts are parallel. In both cases the patient was an inmate in a state hospital, and in both cases the Court recognized the element of danger to the patient himself or others if at large. In the case before the Court the California Supreme Court quoted from *Hawley* as follows (R. 55):

" * * *. 'The enactment and administration of laws providing for sequestration and treatment of persons in appropriate state institutions—subject of course, to the constitutional guaranties—who would *endanger* themselves or others if at large is a proper state function; being so, it follows that the expense of providing, operating and maintaining such institutions should (subject to reasonable exceptions against the inmate or his estate) be borne by the state.'" (italics ours).

Obviously the Court is not talking about senile persons.

Further, the Court has in mind the nature of the institutions that are called state hospitals for the mentally ill. In order to understand the nature of these institutions, let us look to some of the provisions concerning how they are operated and the treatment afforded the patients.

The business manager of each of these hospitals and certain designated employees are police officers. Section 6563 provides as follows:

"The business manager of each State hospital may with the approval of the superintendent, designate, in writing, as a police officer, one or more of the bona fide employees of the hospital. The business manager and each such police officer have all the powers of peace officers. Such police officers shall receive no compensation as such and the additional duties arising therefrom shall become a part of the duties of their regular positions. When and as directed by the business manager or the superintendent, such police officers shall enforce the rules and regulations of

the hospital, preserve peace and order on the premises thereof, and protect and preserve the property of the State."

Section 6624 provides for sterilization of certain of the patients, and this can be done without the consent of the patient or his relatives.

All of these measures are necessary in the custodial care of persons such as the son of Hawley and persons who are dangerously mentally ill. It will be remembered that the son of Hawley was charged with the murder of his own mother.

Petitioner argues that the Court should not have equated the hospitalization of the mentally ill under civil commitment with those confined pursuant to the provisions under the Penal Code (Pet.Br., p. 25). But what difference does it make which route the patient took to get to the state hospital, the purpose of confinement and treatment is the same no matter how the patient got there.

In the case of *Hawley* the insane person allegedly committed a murder, but this is not the reason for his confinement and detention at the state hospital. He is there because he is dangerously insane. The fact that he allegedly committed the murder is merely evidence of his propensities to commit such acts again in the future. Had this propensity of the son of Hawley been discovered by medical examination prior to the time of the alleged murder, the son of Hawley would still have been committed to the same state hospital. The only difference being that the one being a commitment

under the Penal Code and the other being a civil commitment.

Further, the son of Hawley has not yet been convicted of any crime; he was therefore not in the state hospital for punishment. It could be that he may some day regain his sanity, stand trial and be acquitted.

SECTION 6650 IMPOSES AN ABSOLUTE LIABILITY ON SERVIENT RELATIVES WITHOUT REGARD OF ABILITY TO PAY OR THE NEED OF THE PATIENT, AND SUCH A CONCEPT DENIES THE RELATIVE EQUAL PROTECTION OF THE LAW.

In the case before the Court the mother was a committed patient and inmate of Agnews State Hospital for the mentally ill on the date of the death of her adult daughter, Ellinor Vance, which death occurred on or about August 25, 1960. Petitioner billed respondent for the sum of \$7,554.22 for the care and maintenance of the mother covering a period of four years immediately preceding the date of August 25, 1960 (R. 53). Respondent rejected the claim and, petitioner sued the respondent therefor. Respondent demurred to the complaint on the grounds that it did not state a cause of action in that it failed to allege that the mother had no estate of her own. The demurrer was overruled (R. 7), and respondent filed her answer denying the liability and affirmatively pleaded that the mother had a guardianship estate in the amount of \$10,903.35 (R. 9). Both petitioner and respondent filed motions for judgment on the plead-

ings. Petitioner's motion was granted, and respondent's motion was denied (R. 22).

Respondent appealed to the District Court of Appeal of the State of California, and the District Court of Appeal affirmed the judgment (R. 35). The District Court of Appeal apparently found that it was true that there was a sum of \$10,903.35 in the guardianship estate of the mother (R. 28), but held that § 6650 imposed absolute liability on the daughter and on the daughter's estate. The District Court of Appeal stated in part as follows (R. 30):

"The above statute imposes on the persons therein named an unconditional liability for the support and maintenance of a mentally ill relative in a state institution. (Citing cases.) It is clear that it imposes such liability on a daughter of a mentally ill person and on such daughter's estate."

The Court went on to say:

"The liability created by section 6650 is unconditionally imposed and not dependent on ability to pay. (Citing cases.) Nor is it made dependent upon the existence of a 'primary duty' to furnish support. The above statute makes no mention of such expression. It clearly imposes liability, as defendant concedes, on the estate of the mentally ill person. It also expressly provides that the liability of the persons and estates named in the statute 'shall be a joint and several liability.' The law is settled that where an obligation is joint and several, any or all of the persons obligated may be compelled to pay the indebtedness. A person

thus liable may be sued alone without joining any others also liable. In the case at bench, therefore, it was permissible for the Department of Mental Hygiene to enforce the statutory liability against the daughter of the mentally ill person without proceeding against the mentally ill person herself. (Citing cases.)"

Respondent petitioned the Supreme Court of the State of California for a hearing and posed the following questions to that Court (R. 36):

"(a) Does Welf. C. 6650 impose an unconditional and absolute liability upon an adult child, or her estate, for the care of an incompetent mother by the Department of Mental Hygiene where the mother has adequate funds of her own to pay the charges therefor?

"(b) If the answer thereto is in the affirmative would a judgment under such a statute constitute the taking of defendant's property without due process and a denial of the equal protection of the law?"

The Supreme Court of the State of California answers the first question in its decision as follows:

"* * *. Section 6650 by its terms imposes absolute liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from, the assets of the patient. * * *." (R. 58).

Petitioner now argues that § 6650 is not unconditional in that it is dependent upon ability to pay (Pet.Br., p. 33). This is a new position for petitioner.

To the trial Court petitioner argued as follows:

"The liability of the estate of a daughter is clear from the plain words of the statute. This issue is also completely disposed of by the recent decision of the California Supreme Court in *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d 742 (1958). The court held that section 6650 of the Welfare and Institutions Code made the relatives named therein unequivocally liable for the support and care of the mentally ill person. See also, *Department of Mental Hygiene v. Rosse*, 187 A.C.A. 324 (1960); *Department of Mental Hygiene v. Shane*, 142 Cal.App.2d Supp. 881 (1956)." (R. 14).

Further, petitioner argued to the trial Court that the obligation under § 6650 is a joint and several one, and consequently he could sue the daughter alone without joining the mother's guardianship estate (R. 15).

The California courts have worked hard and long in their endeavor to place an interpretation on § 6650. In *Department of Mental Hygiene v. McGilvery* (supra) the Court makes an extensive study of the legislative history of the section and the many cases applying its rule. In *McGilvery* the liability imposed by § 6650 was declared to be unconditional, and in the case at bench this interpretation has been reaffirmed.

Petitioner next argues that whatever injustice may seemingly grow out of the liability imposed by § 6650, that it is all cured by Civil Code § 1432, which section

gives to joint and several debtors the right of contribution (Pet.Br., p. 35). Let us examine this supposed right of contribution and petitioner's concept of fairness that follows therefrom.

California Civil Code § 1432 reads as follows:

"A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him."

Since the liability imposed by § 6650^r is a joint and several liability, the Department of Mental Hygiene can commence its collection proceeding against any one of the persons named in the section. It can sue the patient, or it can sue any one of the servient relatives without joining the others, and the one that pays can sue any of the other servient relatives for the contributive share of each.

Though it may be that the servient relative that pays the Department under the section need not have the ability to pay, the fact of payment is some evidence of ability. However, the servient relative who pays the Department now has a cause of action against the other servient relatives that have not paid, and whatever judgment the paying relative obtains against the others, it will be a judgment for necessities of life provided to the patient, and as such, an execution issuing out of the judgment will not be subject to the exemption provisions of California Code of Civil Procedure § 690.11, which said section deals with the exemption of wages. So it follows that the payment

made to the Department by the paying relative may ultimately be paid in part by another servient relative without regard to the latter's rights to exemption under the exemption laws of this State.

California Code of Civil Procedure § 690.11 provides as follows:

"One-half of the earnings of the defendant or judgment debtor received for his personal services rendered at any time within 30 days next preceding the levy of attachment or execution shall be exempt from execution or attachment without filing a claim for exemption as provided in Section 690.26.

"All of such earnings, if necessary for the use of the debtor's family, residing in this State, and supported in whole or in part by such debtor unless the debts are: (a) incurred by such debtor, his wife or family, for the common necessities of life; or, (b) incurred for personal services rendered by any employee, or former employee, of such debtor."

Since hospital charges are common necessities of life and since the obligation was incurred by the judgment debtor under § 6650 fifty percent of his earnings for services rendered within thirty days next preceding the levy could be reached by execution.

Under § 6650 this can occur even though the patient has an estate of her own, and the servient relative is without an estate and has nothing for the support of himself and his family except wages.

Though the paying relative has a right to sue impoverished relatives, the petitioner is quick to point

out that such a cause of action against the patient must be limited by § 6655. In footnote 24 of petition for a rehearing petitioner said (R. 78) :

"Of course, reading sections 6650 and 6655 together, one would have to conclude that the right of the joint and several obligors to obtain contribution from the patient would be tempered by the admonition of section 6655 that the patient must not be stripped of all his assets so as to leave him a burden upon society. The contributing relatives would have no greater right to impoverish the patient than would the Department of Mental Hygiene."

Section 6650 imposes an absolute liability on the estate of a servient relative regardless of how small the estate may be. Further, the liability is imposed without the Department making a demand for payment during the lifetime of the relative. In the case of *Dept. of Mental Hygiene v. Shane* (1956) 142 C.A. 2d Supp. 881, 299 P.2d 747, the Court says:

"It will be seen from section 6650 that the husband, wife, father, mother, or children of a mentally ill person or inebriate, *their estates*, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. We don't see any connection between the fact that the decedent did not have the ability to pay for his son, the inmate, while he was living and the fact that his estate would be liable. The liability of the father's estate is clearly stated in the section. The matter was briefed in the lower court on the question of the demurrer and the

statute of limitations, and we have considered all the briefs and the demurrer was properly overruled. * * *."

At page 884 the Court says:

"The case must be decided on the plain wording of the statutes and the state statutes say nothing whatever about the size of the estate which a man leaves. * * *"

A servient relative mentioned in § 6650 may have accumulated a small amount of savings during his lifetime for a useful purpose such as the education of his own child. He is not notified during his lifetime of the claim of the Department, but when he dies the Department takes the small estate even though the patient has an estate of her own that may be larger than that of the relative.

We now ask the question what would happen should the patient herself die shortly after the Department's bill has been satisfied out of the small estate of the relative. Who would get the estate of the patient? Presumably the heirs of the patient or the beneficiaries of her Last Will and Testament would be entitled to her estate, and they well may be different persons than the heirs of the servient relative.

Section 6650 makes no provision for the servient relative or his estate to recover the money paid over to the Department, nor does it make any provision under which the payment can be recovered from the estate of the patient. To this the California Supreme Court declares in its decision (R. 58):

"***. Such a concept for the state's taking of a free man's property manifestly denies him equal protection of the law."

SECTION 6650 VIOLATES THE EQUAL PROTECTION CLAUSE.

Petitioner has appended to his brief on file herein the complete text of 39 N.Y.U. L. Rev. 858 (1964), and we assume that petitioner adopts the views therein expressed.

At page 13 of the Appendix it is stated that three steps seem necessary to a complete judicial analysis of an equal protection problem. We shall take the three steps in the order suggested.

1. What Is the Purpose of the Law?

The purpose of the law is set forth in § 19 which provides in part as follows:

"The purpose of this code is to provide for protection, care, and assistance to the people of the State in need thereof, and to promote the welfare and happiness of all of the people of the State by providing appropriate public assistance and services to all of its needy and distressed. * * *."

2. What Classification Is Established by §6650?

The section imposes an absolute liability upon named relatives without regard to the need of the patient or of the ability of the relative to pay. This classification is the interpretation of the Supreme Court of the State of California on this section, and it was also petitioner's interpretation in the trial Court (R. 14).

3. Is There Any Reasonable Relation Between Paragraphs 1 and 2?

There cannot be. The purpose of the Code is to provide assistance to the needy and distressed. The patient in this case is neither; she has an estate of her own of \$11,000.00.

The fact that the patient has an estate of her own and that the patient is not a needy person was brought to the attention of the trial Court at the first appearance of respondent. Respondent demurred on the grounds that plaintiff failed to allege that the patient had no estate of her own out of which the claim of petitioner could be satisfied (R. 4). The demurrer was overruled and subsequently judgment on the pleadings was entered in favor of petitioner based upon petitioner's argument that § 6650 imposed an unequivocal liability on the daughter and her estate (R. 14).

At page 14 of the Appendix the writer then concludes that the Court found:

"* * * : no law could impose private liability for support of mental patients in state institutions."

There is nothing in the decision that could lead one to believe that the State Legislature could not establish homes for the senile and other harmless mentally ill persons, and provide for payment to the state its cost therefor. Nor would the decision bar the Legislature from charging designated able relatives in the event the patient could not pay his own way. But apparently the State of California does not want its senile and harmless mentally ill persons in large state

homes, it wants these persons maintained at the county-level in rest homes, licensed sanitariums and haven homes. In 1957 the State Legislature adopted the Short-Doyle Act, which provides for community mental health services. The intent and purposes of the Act are set forth in § 9000 which provides as follows:

"This division shall be known and may be cited as the Short-Doyle Act. This division is designed to encourage and to assist financially local governments in the establishment and development of mental health services, including services to the mentally retarded, through locally administered and locally controlled community mental health programs. It is furthermore designed to augment and promote the improvement and, if necessary, the expansion of already existing psychiatric services in general hospitals or clinics that help to conserve the mental health of the people of California."

What the California Supreme Court does conclude in the decision before this Court is that the Legislature cannot impose liability on relatives of the mentally ill in a state hospital such as Agnews, and the reason for this is that in this State our state hospitals are reserved for the dangerously mentally ill and are run for the protection of the public from its inmates and for the protection of its inmates from themselves.

It must be noted that § 6650 does not apply to all state institutions as the writer of the articles seems to imply. Section 6650 applies only to state hospitals for the mentally ill, which type of state institution

is covered by Chapter 1 of Part 4 of Division VI of the Code. Other state institutions provided for in Part 4 of Division VI of the Code are state hospitals for the mentally deficient (§§ 7000-7015) and state inebriate colonies (§§ 7100-7111).

Each of these state institutions has a section covering for costs of care. Section 7011.5 covers the costs of the care of a mentally deficient person, and § 7106 covers the costs of the care in an inebriate colony.

**THE DECISION DID NOT DENY PETITIONER
PROCEDURAL DUE PROCESS.**

The California Supreme Court has given two reasons why § 6650 violates the Equal Protection Clause. The first reason given is that *Department of Mental Hygiene v. Hawley* (supra) is dispositive of the issue before the Court, and the second reason is that § 6650 imposed an absolute liability upon the relatives even though the patient has assets of her own. The second reason given in the decision was argued by respondent and covered in her petition for a hearing by the Supreme Court of California (R. 39-41).

There respondent argued that she was improperly classified by pointing out that § 19 spelled out the purpose of the law and that it was to assist needy and distressed persons. That since the patient was not needy and distressed, respondent was a person improperly and arbitrarily classified as a person liable under § 6650.

After the Court held that *Dept. of Mental Hygiene v. Hawley* (*supra*) was dispositive of the issue (R. 55), it nevertheless went on to say:

"Lastly in resolving the issue now before us * * *, and then resolved the issue by saying:

"Section 6650 by its terms imposes absolute liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from, the assets of the patient." (R. 58). (italics ours).

Obviously, the Court had in mind the fact that the patient had an estate of her own of some \$11,000.00; otherwise it could not have used the word "asset."

The adult daughter had no liability under common law or any other section of any of the codes of the State of California other than § 6650 to support the mother. The Court agrees with respondent in her position that the daughter has no more of an obligation than any other person to pay the Department for the support of her mother so long as the mother has assets of her own.

The argument in the California courts was not one of simple priority as to which estate was to be used first as contended by petitioner (Pet.Br., p. 37), respondent's argument was and is that she is improperly classified under § 6650 because the mother had an estate of her own and was not a needy person. Nor, was respondent surprised by the decision. The decision coincides exactly to respondent's contentions.

CONCLUSION

Though petitioner contends that some forty-two states and the District of Columbia have statutes similar to § 6650, he has failed to bring to our attention a single statute that imposes an absolute liability upon an adult daughter for the support of her mother who has an estate of her own of some \$11,000.00.

Further, petitioner has not brought to our attention a single statute of any of the other jurisdictions that imposes an absolute liability upon an adult child for the support of a patient in an institution that is reserved for the dangerously mentally ill.

It is respectfully submitted that the judgment of the Supreme Court of California be sustained.

Dated, Redwood City, California,
December 23, 1964.

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